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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/772,100	01/26/2001	Prem S. Singh	42892/KMO/C945	7975

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EXAMINER

BHAT, NINA NMN

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 06/10/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/772,100

Applicant(s)

SINGH, PREM S.

Examiner

N. Bhat

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 February 2003.
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-52 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1-52 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 2-24-2003.
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after allowance or after an Office action under *Ex Parte Quayle*, 25 USPQ 74, 453 O.G. 213 (Comm'r Pat. 1935). Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, prosecution in this application has been reopened pursuant to 37 CFR 1.114. Applicant's submission filed on February 24, 2003 has been entered.

2. Applicant's voluminous IDS of February 24, 2003 have been fully and carefully considered. The examiner acknowledges that US Patent 5,952,027 to Prem Singh "Method for Browning Precooked, Whole Muscle Meat Products" is subject to litigation by Unitherm Food Systems, Inc. The '027 Patent was used as prior art against the instant claims and the method in the instant claims are directed to a process which is similar to that claimed in the '027 patent and the Unitherm in-line browning/smoking process which was prior art against the '027 patent is prior art against the instant invention which was not supplied to the PTO at the time of examination will now be considered and applied against the instant claims.

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(f) he did not himself invent the subject matter sought to be patented.

4. Claims 1-52 are rejected under 35 U.S.C. 102(a) as being anticipated by Unitherm in-line browning/smoking process used prior to the end of September 1993, the demonstration to ASE and Thorn Apple Valley as well as the proposal/quotation sent to Dr. Prem Singh at Armour Swift-Eckrich February 24, 1998. The process as described by Unitherm in-line browning/smoking involves browning the surface of precooked, whole muscle meat products such as precooked turkey breasts, precooked whole turkey and precooked hams by coating the precooked meat by dipping and/or spraying with a liquid smoke or browning agent composition such as Mailllose, broth and/or other browning or flavoring agents to provide a thin film of the selected agents on the surface of the precooked meat product; the coated precooked product is exposed to a heat energy in a Unitherm RAPIDFLOW circulating air oven for 4 minutes to 12 minutes and a temperature range from 250°C to 350 °C, from the Proposal The RAPIDFLOW II Continuous Convection Oven product description indicates that a meat product is automatically transferred from the liquid Smoke applicator into the Rapid Flow oven typically 4 or 5 pieces across. The high velocity, high temperature air quickly raises the surface temperature of the product causing the liquid smoke or browning solution to react with the surface protein to provide color formation on the surface of the product because a maillard reaction takes place at the surface of the meat. The surface temperature of the meat product is affected by the process, the process does not further cook the meat and the meat is precooked before entering the RapidFlow Oven, the smoking and applications take general 6 to 10 minutes. It is explained in the Proposal

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and description of the Rapid Flow II Continuous Convection Oven that by adjusting the dwell time with the belt speed and adjusting the temperature a desired degree of color on the precooked meat can be achieved. The naturally browned product required between 11 ½ minutes to 18 minutes. The RapidFlow II Continuous Confection oven is a Multizone Convection Oven, which has a wide range of speed control and individual temperature zone control from 0°F to 650°F. The Proposal describes the equipment used in the process as taught by Unitherm which involves a Bag Stripper, and Infra-Red Purge Removal system wherein the turkey breasts with casings are removed and conveyed through a 1,200°F infrared oven chamber which melts off any remaining gelatinous purge and quickly dries the surface and it dramatically improves adhesion of liquid smoke the pyrolysis liquid which results in more of a consistent color. The process of for browning a precooked, whole muscle meat product comprising coating browning liquid pyrolysis product onto at least a portion of the surface of the precooked, whole muscle meat product; and then exposing the coated surface to an energy source that creates an environment having a temperature greater than about 400°C for time sufficient to heat the coated surface of the whole muscle meat product without substantially shrinking the meat product. The process as described by David Howard, President of Unitherm Food Systems fully anticipates applicant's invention as claimed. The Proposal and the Unitherm-in-line browning/smoking process used for producing brown and/or smoked deli meats, turkey breasts, hams and other products qualifies a prior art under 102(a) as this is evidence of activities of a person other than the inventor and that the invention is "used by others" and is available to the public.

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5. Claims 1-52 are rejected under 35 U.S.C. 102(b) based upon a public use or sale of the invention. A February 24, 1998 Proposal to Armour Swift-Ekrich to Dr. Prem Singh on Proposal and Offer to Sell Unitherm in-line browning/smoking process and the system developed by Unitherm qualifies as public use and sale which describes the process as claimed, the Proposal qualifies as prior art because it existed prior to the date of invention which is presumed to be the filing date of the application in the instant case. The Proposal is more than one year prior to the instant inventor's filing date. It is maintained that the Unitherm In-line brown /smoking process and the apparatus used in effecting the process embodies the invention as claimed and that the Unitherm In-Line browning/smoking process has been tested sufficiently to verify that it is operable and commercially marketable. The proposal delineated the process, the apparatus required to effect the process as well as throughput, energy calculation, costs based on the throughput, delivery lead time, and payment terms and constituted a legitimate offer to sell evidencing a commercially marketable process. It is maintained that the Proposal of February 24, 1998 is evidence that the invention was commercialized more than one year prior to the filing date of the instant patent application and constitutes an on-sale bar against the instant claims.

6. Claims 1-52 are rejected under 35 U.S.C. 102(f) because the applicant did not invent the claimed subject matter. From the Unitherm's confidential demonstration of the Unitherm browning/smoking process on September 30, 1993 and the Proposal from Unitherm Food Systems to Dr. Prem Singh on February 24, 1998, the Proposal as well as the demonstration delineating the process of browning the surfaces of precooked,

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whole muscle meat products such as precooked turkey breasts, precooked whole turkeys, and precooked hams fully teaches a process for browning in a precooked, whole muscle meat product comprising coating a browning liquid pyrolysis product onto at least a portion of the surface of the precooked, whole muscle meat product ; and then exposing the coated surface to an energy source that creates an environment having temperature greater than 400°C for time sufficient to selective heat the coated surface of the whole muscle meat product without substantially shrinking the meat product. The Proposal, which includes the apparatus required in perfecting the process specifically, teaches using an infrared heater, which is used to selectively heat the surface of the meat. The infrared heater is used in order to dry the meat and improve the surface for topical coating, in the Unitherm Proposal the Infrared heater is used in a predrying step prior to coating. Applicant's process as claimed does not preclude the pre-drying step using the infrared heater as described by the Unitherm In-Line Process in the Proposal of February 24, 1998.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to N. Bhat whose telephone number is 571-272-1397. The examiner can normally be reached on Monday-Friday, 9:30AM-6:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



N. Bhat
Primary Examiner
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